

A

0006966113



UC SOUTHERN REGIONAL LIBRARY FACILITY

California
Regional
Library



UNIVERSITY
OF CALIFORNIA
LOS ANGELES

SCHOOL OF LAW
LIBRARY

How to Conduct a Receivership

Modern American Law Lecture



Blackstone Institute, Chicago

HOW TO CONDUCT A RECEIVERSHIP

BY
GEORGE F. TUCKER, Ph.D., LL.B.

*One of a Series of Lectures Especially Prepared
for the Blackstone Institute*

BLACKSTONE INSTITUTE
CHICAGO

Copyright, 1919, by Blackstone Institute

T
T7963h

1919

GEORGE FOX TUCKER

The author of this Lecture has been a member of the bar for about forty years. In this period of extensive experience before the courts and in the practice of law he has acquired a fund of knowledge, unusual in its richness to those interested in legal problems.

Mr. Tucker was born at New Bedford, Massachusetts, on January 19, 1852. He received the degree of Bachelor of Arts from Brown University at Providence, Rhode Island, in 1873, and his degree of Bachelor of Laws at Boston University in 1875. Subsequently, the degree of Doctor of Philosophy was conferred upon him. He practiced law in New Bedford from 1876 to 1882 and then removed his law office to Boston where he is in practice today.

From 1890 to 1892, Mr. Tucker was a member of the Legislature of the Commonwealth of Massachusetts. In 1892, he was appointed the Official Reporter of the Decisions of the Supreme Court of Massachusetts. He served in this position until the year 1900.

Mr. Tucker is the author of numerous treatises and articles relating to the law. Among the important are "Testamentary Forms and Notes on Wills," and "Manual of Massachusetts Corporations." He is joint author of Gould and Tucker's "Notes on United States Statutes," and with Dr. Wilson of Harvard on "International Law."

Judge, attorney and layman will find time saving information in these interesting and profitable pages.

HOW TO CONDUCT A RECEIVERSHIP

By

GEORGE F. TUCKER, PH.D., LL.B.

INTRODUCTION

Receiverships have long been common, and, in the case of commercial embarrassments, the tendency seems to be more and more to resort to them. A receiver is a disinterested person appointed by the court to hold and manage the property in liquidation. While there are many occasions for the appointment of receivers, as in the case of partnerships, railroads, banks, etc., yet, for the purposes of illustration, the treatment of receivers of business or industrial corporations alone is deemed advisable in this article.

I

CAUSE FOR APPOINTMENT OF RECEIVER

It is apparent that the general cause for resort to a receivership is the unsound condition of a corporation or, in other words, its inability to meet its obligations. The corporation, if all the creditors concurred, might make a general assignment for the benefit of creditors, without the intervention of a court, and this is sometimes done. Or it might go into or be put into bankruptcy, and its affairs be

liquidated and absolutely wound up. A receivership, however, is a more elastic proceeding; and the affairs of the corporation under the protection and direction of the court are more likely, than in the case of bankruptcy proceedings, to be satisfactorily managed in the interests of creditors, and also in the interests of the corporation itself, if it is to continue in business after the receivership is terminated.

Receivers are appointed by Courts of Chancery or Equity. While it has been held that a mere creditor of a corporation cannot as a rule apply for a receiver, and while it is customary for a judgment creditor, after execution is returned unsatisfied, so to apply, yet the tendency is to appoint a receiver of an insolvent corporation on the petition of a creditor and sometimes of a stockholder. Sometimes the petitioning creditor is an individual or a partnership; frequently a bank or a trust company. In many cases a number of creditors confer and agree upon one or more to take the initiative.

Receiverships are not regarded with favor by some State courts, and a common practice in such cases and especially, if the assets and interests of the corporation are located in several jurisdictions, is for a foreign creditor to apply to the United States Circuit Court. In *Falmouth Bank v. Cape Cod Ship Co.*, 166 Mass. 550, 568, the Court said:

“Generally the appointment of a receiver rests in the sound discretion of the court. But in order to justify the appointment of one on the application of a creditor, it should at least appear that he has a valid claim against the corporation, that there are

assets applicable to its payment, and that he has exhausted his legal remedies, or that the circumstances are such that to deny the application would lead to a wasting and loss of property which otherwise might be made available for the payment of the debts of the corporation, and which could not be availed of in any other manner so satisfactorily as by the appointment of a receiver.”

The effect of the appointment of a receiver is to vest in him the title to the property. The great weight of authority favors the rule that the court having appointed a receiver, and he having taken possession of the property, no other court of co-ordinate jurisdiction can interfere with or remove him. The general doctrine is that the powers of a receiver over the property are co-extensive only with the jurisdiction of the court making the appointment, but courts are inclined to allow suits to be brought by a foreign receiver, when they do not affect rights of citizens of the locality.

While a receiver is an officer of court, he also is the trustee of the parties in interest. As already stated he must be entirely independent, and a shareholder or one in any way interested in the corporation directly or indirectly should not be appointed receiver.

II

PETITION FOR APPOINTMENT

Upon bringing of the petition the corporation is entitled to notice and a hearing. The appointment of a receiver *ex parte* is unusual. At such hearing

the corporation by its attorney will oppose the appointment of a receiver. However, for the purposes of this article we will assume that the corporation acquiesces in the appointment of a receiver as best for all concerned. The petition given below is brought by a Savings Bank located in a State other than that in which the corporation was organized. This gives jurisdiction in a United States Court, the amount of the debt exceeding that required to bring an action in the Federal Court. The petition must cover all essential points as in the following form:—

DISTRICT COURT OF THE UNITED STATES

District of

In Equity.

People's Savings Bank

v

The Fairfield Manufacturing Company.

BILL OF COMPLAINT

To the Honorable the Justices of the District Court of the United States for the District of, sitting in Equity:—

The People's Saving Bank complains and says as follows:—

FIRST: That it, the plaintiff, is and was at the date of the commencement of this suit, a corporation duly established under the laws of the State of....., that it has and has had its principal office at, in said State, that it is a citizen and resident thereof, and that in behalf of itself, and all other creditors and stockholders of the defendant, The Fairfield Manufacturing Company, a corporation duly established under the laws of the State of, and a citizen thereof, who may hereafter join in this suit as parties and contribute to the expenses thereof, it brings this bill of complaint against the defendant.

SECOND: That the defendant was before and at the time of the commencement of this suit and is now a citizen and resident of the State of, engaged in the manufacturing of cotton cloth and in the spinning of yarn in, in said State.

THIRD: That the defendant has a capital stock of one million dollars (\$1,000,000), divided into ten thousand (10,000) shares of the par value of one hundred dollars (\$100) each, of which two hundred thousand dollars (\$200,000) consists of two thousand (2,000) shares of preferred stock of the par value of one hundred dollars (\$100) each, issued conformably to, etc., and the balance of eight hundred thousand dollars (\$800,000) consists of eight thousand (8,000) shares of common stock of the par value of one hundred dollars (\$100) each.

FOURTH: That the defendant is indebted to the plaintiff in the sum of over two thousand dollars (\$2,000), namely, in the sum of eight thousand four hundred dollars (\$8,400), evidenced by the promissory note of the defendant for that amount, dated August 20, 1905, payable to the plaintiff on demand, payment of which has been demanded by the plaintiff of the defendant and refused by it, the reason therefor being, as the plaintiff is informed and believes, insufficient funds in its possession to pay said note and also several other obligations which have matured and upon which demand has been made and refused, copies of which notes and obligations are hereto annexed marked "A."

FIFTH: That the plaintiff alleges upon information and belief that the defendant has outstanding many more promissory notes aggregating at least three hundred thousand dollars (\$300,000), which will soon be due and payable, and that upon their maturity it will be unable to pay the same, in that it has no money and no assets readily convertible into cash; and that the defendant is indebted for merchandise purchased for an amount exceeding fifty thousand dollars (\$50,000).

SIXTH: That the defendant is insolvent and has no funds with which to carry on its ordinary business.

SEVENTH: That the defendant has valuable assets in the shape of plant, real estate, machinery, materials, accounts

receivable, etc., the forced sale of which will prove very disastrous; that it has valuable outstanding contracts, the failure to fulfil which will cause great loss to the defendant, its creditors, and stockholders, and that great loss will also follow the placing of attachments upon the property of the defendant, and that competent persons should be authorized to take charge of the property and business of the defendant, and, if they deem it advisable, to carry on the same, subject to the order of this court.

EIGHTH: That while the real estate and machinery and much of the merchandise of the defendant are within the jurisdiction of the court, a good part of the personal property is situated in other States, and that the same and the property here are liable to attachment unless receivers are appointed for the equal protection of all creditors.

The plaintiff therefore prays:—

First: That this honorable court will appoint proper and competent persons receivers of the defendant corporation to collect all outstanding debts and moneys due to the defendant and also to take possession of all the property, both real and personal, of the defendant.

Second: That the defendant, its officers, agents, and servants, may be directed by order or injunction to deliver up to said receivers all the property, real and personal, of the defendant, including the stock in trade; and also all moneys, drafts, notes, checks, and other evidences of indebtedness belonging to or due the defendant, together with all books of account, accounts, vouchers, receipts, documents, and papers of the defendant; that the stock in trade and other personal property of the defendant may be sold and turned into money, but only under the direction of this court, and that they be authorized, if they deem best, to carry on the business of the defendant corporation until the further orders of this court.

Third: That an injunction be issued by this honorable court restraining each and all of the creditors of the defendant corporation from attaching on mesne process or otherwise the property of the defendant corporation till further order of this court.

Fourth: That proper subpoena may issue to the defendant summoning it to appear before this court and make answer to this bill of complaint.

Fifth: That such further relief may be granted in the premises as justice and equity may require.

People's Savings Bank,
By A. B., President.

C. D., Counsel for Plaintiff.

September 8, 1905.

(Jurat of president of plaintiff—also jurat of president of defendant to the effect that allegations of bill are correct and that the defendant cannot raise money to meet its obligations as they may mature.)

SCHEDULE A.

(Copies of Notes.)

In the following forms the court headings are omitted:

APPEARANCE AND ANSWER

And now appears E. F., as counsel for the defendant, The Fairfield Manufacturing Company, and, conformably to the vote of its directors, a copy of which is hereto annexed, consents that receivers may be appointed and that the decree may be made as prayed for in the bill.

E. F.

VOTE OF DEFENDANT'S DIRECTORS AUTHORIZING E. F. TO APPEAR FOR DEFENDANT

Voted that E. F., of, be and he is hereby authorized to appear as counsel in the proceedings begun on the 8th day of September, 1905, in the United States Circuit Court for the District of, for the appointment of receivers of this corporation, and to assent to the decree prayed for.

III

DECREE APPOINTING RECEIVERS

The above petition will be brought up before the Court and, there being in this case no opposition, the Judge will enter an order or decree. This order or decree invests the receivers with title to all the property of the corporation, authorizes them to take possession of the same and to operate the plants and continue the business. The officers are required to turn over to the receivers all books, moneys, and property under their control and to deliver to them deeds of all real estate. The receivers are authorized to prosecute and defend suits, and they are directed to pay all amounts due to employees. Each receiver is required to give a bond. The creditors of the Company are enjoined from attaching or intermeddling with the property, and also the officers of the Company, except to turn over the property to the receivers.

Jackson, J. Upon reading and filing the verified bill of complaint in this cause, together with the verified affidavit of the president of The Fairfield Manufacturing Company, and, on motion of C. D., counsel for complainant, E. F., counsel for defendant, appearing and consenting thereto, it is ordered by the court that G. H., I. J., and K. L., all of, in said district, be and they are hereby appointed receivers of the court of all and singular the property of The Fairfield Manufacturing Company of every description, and all moneys, merchandise, manufactured goods, material and supplies, claims in action, credits, bonds, stocks, leasehold interests, or operating contracts, and other assets of every kind, and all other property, real, personal, or mixed, held or possessed by said corporation,

to have and to hold the same as the officers of and under the direction of the court.

The said receivers are hereby authorized and directed to take immediate possession of all and singular the property above described, and to take possession of the factories of said corporation in the District of, and to operate the same and continue the business of said corporation.

Each and every of the officers, directors, agents, and servants of the said The Fairfield Manufacturing Company are hereby required and commanded forthwith upon demand of the said receivers to turn over and deliver to such receivers all books, moneys, deeds, property, or vouchers for property under their control. The said Fairfield Manufacturing Company and its officers are hereby directed immediately to execute and deliver to the said receivers deeds of all real estate now owned or possessed by said corporation, and transfers and assignments of all its property.

Said receivers are hereby fully authorized to institute and prosecute all such suits as they may deem necessary, and to defend all such actions instituted against them as such receivers, and also to appear in and conduct the prosecution or defense of any suits by or against said The Fairfield Manufacturing Company. The said receivers are hereby authorized and directed to pay and discharge, out of the moneys coming into their hands, all amounts due to employees.

Each of said receivers is required to file with the clerk of the court, within ten days from date, a proper bond with surety to be approved by the clerk of this court in the penal sum of twenty thousand dollars (\$20,000) for the faithful performance of his duty herein. Said security may be in the form of separate bonds and the surety or sureties are to be approved by the court.

All creditors of said The Fairfield Manufacturing Company are hereby enjoined from making any attachments of or in any way meddling with the property to be turned over to said receivers, and all officers, directors, agents, and servants of said The Fairfield Manufacturing Company are hereby enjoined and restrained from interfering with or disposing of said property in any way except to transfer, convey, and turn over the same to said receivers.

And it is further ordered, adjudged and decreed that the plaintiff herein is hereby authorized to apply to any other United States Circuit Court of competent jurisdiction within whose jurisdiction there may be situated any assets of the said The Fairfield Manufacturing Company, and which may take ancillary jurisdiction of said cause, for such order or orders in aid of the primary jurisdiction vested in said United States Circuit Court for the District of

By the Court.
James Brown, Clerk.

September 14, 1905.

ACCEPTANCE OF RECEIVERS

And now come G. H., I. J., and K. L., and hereby accept their appointment by this honorable court as receivers of the property and assets of The Fairfield Manufacturing Company.

(Signatures.)

September 18, 1905.

IV

GENERAL POWERS, DUTIES, ETC., OF RECEIVERS

The above decree having been made and the receiver being ready to enter on his duties, we will now briefly consider what those duties are, by what obligations he is bound and to what restraints he is subject.

The powers of a receiver, under the direction of the court, are generally to borrow money, compromise debts, employ counsel, bring actions, make repairs, purchase supplies, employ labor, perform existing contracts, pay taxes, continue the business, etc.

It is to be remembered that, in the absence of statute, suits cannot be brought against a receiver without the permission of the court which appointed him. There are a few exceptions, notably that of a Federal Statute, which provides that every receiver appointed by a United States Court may be sued without the previous leave of court. The same statute also provides that a receiver appointed by a United States Court shall manage the property according to the requirements of the valid laws of the State in which it is situated. It is to be noted that an action against a receiver is in reality an action against the receivership, or the funds in the receiver's hands, and judgments against him as receiver are payable only from the funds in his hands.

The date of the appointment of the receiver is generally adopted as the time when the rights of the parties should be adjusted, but there is no fixed rule, and in some cases the date of the filing of the bill has been taken as the date of adjustment.

An important matter is priority of payment of claims. These are determined in some jurisdictions by statutes, which recite that debts due to the United States are to be first paid, then taxes and then wages to an amount, say not to exceed one hundred dollars. Courts of Equity generally place creditors on an equality, so far as possible. This subject is treated in *MODERN AMERICAN LAW, RECEIVERS*.

In the case of railroads, receivers are authorized to issue certificates which are a first lien upon the property, but these are rare in the case of business corporations.

V

GENERAL PROCEEDINGS OF RECEIVERS

It is not possible to treat here all phases of the subject, so we will present the more important considerations. The receivers will first file an inventory and the following is offered as a form:—

RECEIVER'S INVENTORY

(Names), receivers of The Fairfield Manufacturing Company, present this report as an inventory of the value of the property and assets of said company.

(Signatures.) Receivers.

September 19, 1905.

(Jurat.)

Manufacturing plant and fixtures.....\$303,804.10

QUICK ASSETS

Raw material, stock in process, mer-

chandise on hand and on road..\$290,802.04

Cash 4,304.02

Accounts receivable 135,713.25 430,819.31

\$734,623.41

In many cases a more elaborate statement may be desirable.

We will now assume that there are certain bills incurred before the receivership which ought to be paid:

**PETITION FOR AUTHORITY TO PAY BILLS INCURRED
BEFORE RECEIVERSHIP**

To the Honorable the Justices, etc.:

Respectfully represents G. H., I. J., and K. L., appointed by decree of this honorable court entered September 14, 1905, receivers of the defendant corporation, that they have qualified

by filing bonds as therein directed and have assumed their duties as such;

That, it having been discovered on September 1, 1905, that the defendant corporation was financially embarrassed, the directors on the following day employed U. V., an expert machinist and manufacturer of cotton, to examine the entire plant, cotton in stock and in process, finished goods, waste, etc., and ascertain the value and amount thereof, and also W. X., an expert accountant, to examine the books of the corporation and ascertain the items and amount of bills and notes and bills payable and receivable;

That, on September 8, 1905, a bill was filed in this court for the appointment of receivers, and thereafter receivers were appointed by decree of September 14, 1905; that on September 16, 1905, the said U. V. and W. X. made their reports, which were availed of by the receivers and have proved of great assistance to them, providing a serviceable basis for a receiver's inventory; and the amount of the bills are as follows: U. V., \$203.04; W. X., \$190.17; which amounts cannot be paid by the corporation, as its property passed into the hands of receivers before the completion of the work of said U. V. and W. X.

Wherefore the said receivers pray that this court will authorize them to pay said amounts of \$203.04 to U. V. and \$190.17 to W. X. from the funds in their possession.

C. D., of Counsel for the Receivers.

September 19, 1905.

ORDER OF COURT

Jackson, J. This matter coming on to be heard on petition of (names), receivers of The Fairfield Manufacturing Company, appointed in the above entitled action, and on reading and filing the said petition,

It is hereby ordered that the prayer thereof be granted, and that said receivers be and they hereby are authorized and empowered to pay the following persons the amounts set against their names respectively for services rendered in the matters set forth in the petition, viz.: U. V., \$203.04, and W. X., \$190.17.

By the Court,

September 19, 1905.

James Brown, Clerk.

Now follow petitions and decrees common in most cases:

PETITION BY RECEIVERS FOR AUTHORITY TO SELL RAW MATERIAL

To the Honorable the Justices, Etc.:

Respectfully represent (names), receivers of the defendant corporation, that they find among the assets thereof a quantity of raw material, which, in their judgment, it is inexpedient to manufacture, that the same should be sold in its present condition, that they have received from the firm of Johnson & Jones, of, an offer therefor, which they believe to be reasonable, a copy of which is hereto annexed, and that unless said offer is accepted it will be impossible for your petitioners to realize on the raw material so large a price as is contained in said offer, and the conversion of the same into cash will cause delay and will be attended by expense.

Wherefore your petitioners pray that they may be authorized to accept said offer and enter into a contract with said Johnson & Jones embodying the provisions thereof.

C. D., of Counsel for the Receivers.

September 20, 1905.

(Annex original copy.)

ORDER OF NOTICE

Jackson, J. Upon the petition of (Names) receivers of The Fairfield Manufacturing Company, filed September 20, 1905, praying for authority to accept an offer of Johnson & Jones of for the purpose of certain raw material in their lands, and to enter into a contract with said Johnson & Jones embodying the provisions of said offer.

It is ordered that the petitioners give notice to all creditors of said The Fairfield Manufacturing Company to appear before this court on Wednesday, the tenth day of November, 1905, at ten o'clock in the forenoon, to show cause, if any they have, why the prayer of the petition should not be granted, by publishing an attested copy of this order three times, the last publication to be one week before the day of hearing, in the Daily Telegraph, a newspaper published in the

city of, and by mailing forthwith to all known creditors of said corporation a printed copy of this order.

By the Court,
James Brown, Clerk.

September 21, 1905.

AFFIDAVIT OF SERVICE OF NOTICE

The order of notice, a copy of which is annexed hereto, has been served as therein ordered by mailing a printed copy of the order to all known creditors of The Fairfield Manufacturing Company, on September 22, 1905, and by publishing an attested copy of the order in the Daily Telegraph upon October 20, October 27, and November 3, 1905.

C. D., Of counsel for the Receivers.
(Jurat.)

(Annex copy of order of notice.)

DECREE

November 10, 1905

Jackson, J. This cause came on to be heard this day upon the petition of (names), receivers of The Fairfield Manufacturing Company, filed September 20, 1905, praying for authority to accept an offer of Johnson & Jones of, which offer is annexed to the said petition, and it appearing to the court that due and sufficient notice of the filing of said petition and the hearing to be held thereon has been given to all known creditors of said The Fairfield Manufacturing Company, and after hearing the evidence in support of the allegations in said petition, and after hearing counsel for the petitioners in support thereof, and no one appearing and objecting thereto, and it appearing to the court that it is for the best interests of all creditors of said The Fairfield Manufacturing Company and all parties interested in said cause upon motion of C. D., counsel for the petitioners:—

It is hereby ordered, adjudged, and decreed that (names), as said receivers of The Fairfield Manufacturing Company, be authorized to accept the offer of said Johnson & Jones, which appears annexed to the petition of the said receivers, filed September 20, 1905, and to enter into a contract with the said

Johnson & Jones as such receivers to carry out the provisions of such offer, and to do and perform all things required upon their part for the performance and fulfilment of said accepted offer and contract made under authority of this decree.

By the Court,
James Brown, Clerk.

PETITION OF RECEIVERS FOR AUTHORITY TO PAY INTEREST ON MORTGAGE

To the Honorable the Justices, Etc.:

Respectfully represent (names), receivers of the defendant corporation, that a portion of the land and buildings owned and used by The Fairfield Manufacturing Company, of which your petitioners have taken possession as receivers under the decree of the court dated September 14, 1905, for the manufacturing of cotton cloth and for the spinning of yarn, formerly belonging to one Henry Jacobs of, who sold and conveyed the same to said The Fairfield Manufacturing Company, July 19, 1904, the deed being recorded with, Registry of Deeds, Book 19,000, Page 91; that there has been a mortgage upon said land and buildings given by said Jacobs to the Thurman Savings Bank of, a corporation duly established by law, upon which there was due the sum of One Hundred Thousand Dollars (\$100,000); that the debt so secured by the said mortgage was assumed by said The Fairfield Manufacturing Company at the time of the sale and conveyance from the said Jacobs, and that said The Fairfield Manufacturing Company has ever since paid the interest upon said debt as it has fallen due; that the debt secured by the mortgage is evidenced by a promissory note, dated March 20, 1902, payable to the Thurman Savings Bank or order on demand with interest after six months at the rate of five per cent. per annum; that upon said note the said savings bank has always demanded and received interest for a period of six months in advance; that upon September 20, 1905, since the appointment of your petitioners as receivers, the period for which the interest upon said note had been prepaid expired, and the said savings bank has made a demand upon your petitioners as receivers either to pay the principal of said note or

to pay the sum of Twenty-five Hundred Dollars (\$2,500), being six months' interest in advance from said September 20, 1905; that the said savings bank intends, as your petitioners are informed and believe, to apply to this honorable court for leave to foreclose its said mortgage unless interest is paid in advance as aforesaid, or unless the amount of the principal and overdue interest is paid upon demand; that in the judgment of your petitioners it is expedient and for the best interests of all the creditors of said The Fairfield Manufacturing Company that that portion of the plant, being the land and buildings aforesaid, should be operated for six months and perhaps for a longer period to the end that your petitioners may dispose of the same and the rest of the property of the company at a more advantageous figure, the trade and customers of the company be retained and the same of the entire plant and assets as a going concern be made possible.

Wherefore your petitioners pray that they may be authorized to pay forthwith out of the funds now in their hands, being the assets of said The Fairfield Manufacturing Company derived from the collection of its debts and the sale of its products, the sum of Twenty-Five Hundred Dollars (\$2,500) to the said Thurman Savings Bank, being six months' interest in advance upon a note of One Hundred Thousand Dollars (\$100,000) from September 20, 1905, and to secure from said Thurman Savings Bank some stipulation which will give to your petitioners as receivers the right to continue to occupy and operate the said portion of the plant subject to the mortgage of the said Savings Bank without interference by demand for payment and by foreclosure of the said Savings Bank, for said period of six months.

C. D., Of counsel for the Receivers.

September 25, 1905.

(Order of notice and affidavit of service.)

DECREE ON PETITION OF RECEIVERS TO PAY INTEREST ON MORTGAGE

November 13, 1905

Jackson, J. This cause came on to be heard upon November 13, 1905, upon the petition of (names), receivers for The Fair-

field Manufacturing Company, filed September 25, 1905, praying for authority to pay to the Thurman Savings Bank, out of funds of the defendant corporation now in their hands, the sum of Twenty-five Hundred Dollars (\$2,500) for interest for six (6) months from September 20, 1905, upon a debt secured by a mortgage upon certain land and buildings, property of the defendant corporation, and it appearing that the notice of the hearing upon this petition has been given to all creditors of said The Fairfield Manufacturing Company, as appears from the return of an order of notice filed, and no one appearing to object thereto, and after hearing evidence in support of the allegations in said petition, it appearing to the court that the allegations in said petition are true, and that it is expedient and for the best interests of all parties concerned that the prayer of the petition be granted, upon motion of C. D., counsel for the petitioners:—

It is hereby ordered, adjudged and decreed that (names), receivers of The Fairfield Manufacturing Company, pay out of funds now in their hands or coming into their hands belonging to the said defendant company the sum of Twenty-Five Hundred Dollars (\$2,500), interest for six months from September 20, 1905, upon a debt from said defendant company to said Thurman Savings Bank, secured by a mortgage upon a certain portion of land and buildings the property of the defendant company, upon receiving from the said savings bank due and sufficient authority to continue the occupation of said premises covered by the mortgage, without interference by foreclosure or otherwise, during the period for which said interest is paid.

By the Court,
James Brown, Clerk.

PETITION FOR DECREE FOR PROOF OF CLAIMS

To the Honorable the Justices, Etc.:

Respectfully represent (names), receivers of the property and assets of The Fairfield Manufacturing Company, that, having taken possession of said property and assets, and having proceeded to collect the assets and reduce the same to cash, they find it necessary that this honorable court should order and

direct all creditors of said company to present and prove their claims;

Wherefore they pray that the court will issue its order directing all creditors of said company to present their claims against its assets, verified by affidavit, to your petitioners, as receivers, or to any one or more of them, on or before May 1, 1906, and that all creditors who do not file their claims within said time specified shall be barred from participating in the distribution of the assets of said company under the directions of this court, unless the court for good cause shown shall otherwise order; and that your petitioners as receivers be authorized and empowered to make such general rules and directions as to the manner and form of proving claims as they shall deem expedient and proper.

By their attorney,

November 14, 1905.

C. D.

DECREE ON PETITION TO PROVE CLAIMS

November 14, 1905

Jackson, J. This cause came on to be heard on November 14, 1905, upon the petition of (names), receivers of the property and assets of The Fairfield Manufacturing Company, filed this day, praying that the court enter a decree ordering and directing all creditors of said company to prove their claims in such manner and within such time as to the court shall seem proper; and it appearing to the court that such a decree is expedient and necessary, and upon motion of C. D., counsel for the receivers:—

It is ordered, adjudged, and decreed that all creditors of and claimants against said The Fairfield Manufacturing Company present their claims against said corporation, verified by an affidavit, to said receivers, or to any one or more of them, in such form and subject to such general directions as said receivers may determine, on or before the first day of May, 1906; and that all persons or corporations whose claims are not presented in the manner and within the time prescribed shall be barred from participation in the distribution of the assets in the hands of the said receivers under the directions of this court, unless the court for good cause shown shall otherwise order.

It is further ordered, adjudged, and decreed that the receivers give notice of this order by publishing an attested copy thereof in the Daily Telegraph, a newspaper published in, at least once a week for six successive weeks, and by mailing forthwith to all known creditors of said company a printed copy of this order.

By the Court,
James Brown, Clerk.

(Order of notice and affidavit of service.)

PETITION TO PAY SMALL CLAIMS

To the Honorable the Justices, Etc.:

Respectfully represent (names), the receivers of The Fairfield Manufacturing Company, that the condition of the assets and property is such that it would seem that the debts of the company will be ultimately paid in full, and that the surplus will be sufficient for a dividend upon the preferred stock of said company; that among its creditors is a large class to the number of 114 whose claims do not amount to the sum of ten dollars each, and the aggregate of said claims does not exceed the sum of seven hundred dollars; that it will greatly aid the settlement of the estate if the receivers are authorized to pay and discharge said claims at once and that said action will also inure to the benefit of the other creditors and the preferred stockholders.

Wherefore the receivers pray that the court will authorize them to pay and discharge all claims against said corporation which do not exceed the amount of ten dollars each.

(Signatures.)

November 15, 1905.

(Jurat.)

If there are only a few owners of preferred shares, they may sign a paper like the following:—

We, the undersigned owners of all the shares of the preferred stock of The Fairfield Manufacturing Company, hereby consent

to the granting of the petition of the receivers for the payment of claims not exceeding ten dollars each.

(Signatures with amount of shares owned set against respective names.)

DECREE ON PETITION TO PAY CLAIMS NOT EXCEEDING TEN DOLLARS EACH

November 15, 1905

Jackson, J. Upon petition of (names), receivers of The Fairfield Manufacturing Company, praying for authority to pay claims not exceeding Ten Dollars (\$10) each in value, it appearing to the court that the allegations in said petition are true, and that it is for the best interests of all parties concerned that the prayer of the petition be granted, it is hereby ordered, adjudged, and decreed that said receivers pay out of the funds now in their hands or coming into their hands belonging to the said defendant company all claims against said company which may be proved to the satisfaction of said receivers not exceeding in amount the sum of ten dollars each, and the whole sum to be paid under this order by the receivers not to exceed the sum of seven hundred dollars, without further order of the court.

By the Court,
James Brown, Clerk.

Other matters treated by petition, order of notice, affidavit of service, decree, etc., are compromise of claims, report of receivers upon collection of assets and conversion into cash, application for allowance of receivers' compensation and counsel fees, payment of dividends, report upon proof of claims and as to savings bank mortgage and decree thereon, ancillary proceedings in another jurisdiction, and reference in that jurisdiction to and report by master, allowance of account, etc.

VI

**TERMINATION OF RECEIVERSHIP AND DISCHARGE
OF RECEIVERS**

Upon the termination of the duties of the receivers they will obtain their discharge, after petition to the court, order of notice, affidavit of service, etc.

The above proceedings are largely taken from an actual case. It will be noticed that in the petition to pay small claims, it is stated that the debts would ultimately be paid in full, and that the surplus would be sufficient for a dividend upon the preferred shares. In this case an arrangement was made for the rehabilitation of the corporation. This was accomplished by the reduction of capital equivalent to the loss causing its insolvent condition, and then the increase of capital to an amount equal or nearly equal to the loss. A petition was presented to the Court which concluded as follows:—

“Wherefore said receivers submit herewith the account of their doings and pray that the same may be approved and for their discharge; and that due transfer of assets by them to the said corporation may be authorized, and that these proceedings may be discontinued.”

Geo. F. Tucker



UC SOUTHERN REGIONAL LIBRARY FACILITY



A 000 696 611 3

University of California
SOUTHERN REGIONAL LIBRARY FACILITY
305 De Neve Drive - Parking Lot 17 • Box 951388
LOS ANGELES, CALIFORNIA 90095-1388

Return this material to the library from which it was borrowed.

DATE DUE

AUG 26 2005

SRLF

2 WEEK LOAN

UCLA COL LIB
RECEIVED - AUG 26 2005

Unit
S